



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2004

Ms. Jennifer McClure
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2004-2235

Dear Ms. McClure:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198227.

The Dallas County District Clerk (the "clerk") received a request for (1) an itemized list of any unclaimed funds held by the clerk, and (2) an itemized list of all funds currently on deposit with the clerk. You state that the clerk sought clarification on January 8, 2004, seeking the requestor to narrow or clarify his request "so that the [clerk] could know specifically what information [the requestor] desired." *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request). You state that as of the date of your request for a ruling, the requestor has not responded to your request for clarification. When the requestor has not responded to a request for a clarification, a governmental body need not respond to the portions of the request for which it is seeking clarification. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification).

Despite the fact that you have sought clarification, however, you have submitted information that you now indicate is a representative sample of information that is responsive to the request as a whole. Therefore, we have considered your claims that the submitted representative sample of information is not subject to the Public Information Act (the "Act") pursuant to section 552.0035 of the Government Code or, in the alternative, is excepted from disclosure under section 552.101 of the Government Code, and we have reviewed the information.¹

¹We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that

The Act applies to information that is “collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body.” Gov’t Code § 552.002(a)(1). However, a “governmental body” under the Act “does not include the judiciary.” Gov’t Code § 552.003(1)(B). Information that is “collected, assembled or maintained by . . . the judiciary” is not subject to the Act but is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” Gov’t Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In addition, information that is “collected, assembled, or maintained . . . for the judiciary” by a governmental body acting as an agent of the judiciary is not subject to the Act. *Id.*; *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981).

You state that the request could include records pertaining to cash bail bonds, which are funds in the registry of the court. You also state that the request could include information regarding unclaimed/abandoned cash bail bonds. You assert that these records are judicial records not subject to the Act. Thus, you indicate that the clerk maintains the requested information on behalf and at the direction of the judiciary, and that the information is created and maintained solely for judicial purposes. Further, we note that the clerk “is the Custodian of funds deposited into the Registry of the Court as a result of monies involved in lawsuits over which the Judges have control by Court Orders. . . . [The clerk] also collects . . . bond forfeitures.”² Based on these representations, we conclude that the requested information constitutes records maintained for the judiciary under section 552.0035(a) of the Government Code. Therefore, the clerk has no obligation under the Act regarding the release of the requested information. The release of the requested information is within the discretion of the court. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)). Because our ruling is dispositive, we need not address your argument against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

those records contain substantially different types of information than that submitted to this office.

²*See* <http://www.dallascounty.org/html/citizen-serv/district-clerk/function.html>

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long, sweeping horizontal line extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 198227

Enc. Submitted documents

c: Mr. Benjamin Tarver
Unclaimed Funds Recovery Services
P. O. Box 821169
Houston, Texas 77282
(w/o enclosures)